UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1145
12 March 1996

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1145th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 7 March 1996, at 3 p.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Thirteenth periodic report of Spain

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-15534 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Thirteenth periodic report of Spain (CERD/C/263/Add.5; HRI/CORE/1/Add

1. At the invitation of the Chairman, Mrs. Vevia Romero, Mr. Aparicio Gómez-Lobo, Mr. Porras Muñoz, Mr. González de Linares Pa Mrs. Martínez Cano-Cortes (Spain) took places at the Committee table.

2. Mr. VEVIA ROMERO (Spain), introducing her country's thirteenth p report (CERD/C/263/Add.5), said that, since preparing the report, Spa felt obliged, like most democratic countries, to take further decisiv against racial discrimination. For example, the new Criminal Code de more offences in that regard, and Organization Act No. 4/95, amending Criminal Code, dealt with the crime of genocide and the defence or dissemination of ideologies upholding racism or ethnic exclusion; it recognized racism and anti-Semitism as aggravating circumstances in o against persons and property. The new Code, which would enter into f on 26 May 1996, also recognized a number of offences against the exer of fundamental rights and public freedoms, involving the provocation discrimination, hatred or violence on racist grounds, and it containe provisions relating to illegal foreign labour, clandestine immigratio discrimination on ethnic or racial grounds. Perhaps the main feature amended Asylum Act was the facility for granting residence to applica had become displaced persons as a result of having had requests for a denied. In addition, the implementing regulations for Organization A No. 7/85, on the rights and freedoms of aliens in Spain, had been sim and a number of measures, including the creation of the interministe commission on aliens, had been taken in response to the growth in the number of foreign residents in Spain, given the State's obligations u international instruments and the desire to improve the legal securit foreign workers through greater integration.

3. Other advances included a new system for visas, entry controls residence permits, and the creation of the status of permanent reside uniform documentation and new approval procedures. During its presid the Council of Ministers of the European Union in the second half of Spain had proposed a number of measures to combat racism and xenophob including a draft proposal for joint action based on harmonization of relevant national laws; although the proposal had been opposed by the United Kingdom, it was hoped that that obstacle could be overcome dur Italy's presidency. Furthermore, the new Parliament (Cortes) was exp to approve a proposal that Spain should make a declaration under arti the Convention.

4. In view of the many recent changes referred to, the authorities to draw up and submit the fourteenth periodic report very shortly, an welcome any suggestions by the Committee in that regard. The Spanish Government and people remained determined to combat racism and racial discrimination by all available means and in all fields.

5. The CHAIRMAN thanked the Spanish delegation for its presence, the introduction of the report and the additional oral information. In view of the short interval between the current and previous periodic reports, the Committee had decided to depart from its usual practice by inviting the same member as before to act as Country Rapporteur.

6. Mr. FERRERO COSTA (Country Rapporteur) noted that the thirteenth report was more comprehensive than the previous one, and that it provided information on such matters as immigration, asylum and foreign workers. However, it lacked details about the country's ethnic composition and he drew attention to the Committee's guidelines and earlier criticisms in that regard.

7. He noted the information provided in sections 6, 7 and 69 of the report on the 17 Autonomous Communities which were in the process of having certain powers transferred to them by the State. The Committee should be given details of the relevant enabling legislation, and of the powers to be transferred and the spheres concerned. Information should also be provided on the main issues involved in the conflicts of responsibility between the Government and the Autonomous Communities, which were mentioned in paragraphs 18-20. One matter that could be usefully elucidated was the perceived balance between the limits to local autonomy imposed by the State and Catalonia's aspirations regarding the progressive recovery of more self-governing powers. Moreover, the next periodic report should include information on measures taken to promote local autonomy, and on the extent to which those regions which already enjoyed a substantial degree of autonomy were fulfilling their obligations under the Convention. With reference to the Basque Country, Catalonia, Andalusia and Madrid, which were of particular interest because of their size, the fourteenth periodic report could usefully provide population figures, including an ethnic breakdown, together with details of the main policy-making and executive bodies, especially those concerned with racial and ethnic issues; other information, in response to the Committee's observations, could concern questions of racial discrimination, including any lawsuits, and specific legislation on such matters as education in minority languages.

8. With regard to article 2 of the Convention, he asked what progress, if any, the Government had made in defining or implementing a general policy for the prevention of racial discrimination. As far as the Gypsy population was concerned, he would welcome an estimate of its current numerical size, and with reference to paragraph 53 he asked what practical criteria were used to measure the progress of campaigns sponsored by the Ministry of Social Affairs. In that connection, the reference, in paragraph 62, to the premature school drop-out rates and levels of truancy among Gypsy pupils seemed to be contradicted by paragraph 57 (a), which referred to improvements in the levels of absenteeism and failure.

9. He asked which Autonomous Communities were involved in the Gypsy Development Programme and whether there were any plans for its expansion. Doubts about the success of the programme seemed to be corroborated by evidence that there was de facto discrimination against Gypsies, particularly in education, housing and employment, which prompted him to reiterate the question, not fully answered in paragraphs 21 to 25 of the thirteenth report, as to whether the central Government or the Autonomous Communities had taken

any additional measures, since 1994, to improve the situation of the Gypsy population. With reference to paragraph 76 of the report, he asked what steps had been taken to remove the pejorative word gitanada from the Royal Academy dictionary and to ensure that it was no longer used.

10. While commending the Rehousing Plan described in paragraphs 63-70 of the report, he pointed out that the measures taken under the plan might conduce - albeit unintentionally - to racial segregation within the meaning of article 3 of the Convention. He invited comments on that question and on the scope of the plan, as well as on reports that walls were being built around the camps set up, with the result that they resembled prison camps.

11. Turning to the information provided in paragraphs 77-89 about the situation of the Muslim population in Ceuta and Melilla, he requested a statistical breakdown, by nationality, of the Muslim population of Melilla. In connection with paragraph 83, he inquired into the nature of the remedial measures adopted by the Government to improve the status of Muslims with very low incomes in Melilla. He asked whether the positive discrimination measures described in paragraph 84 applied to foreign Muslims resident in Melilla as well as Muslims of Spanish nationality. The questions to be asked in connection with paragraph 87, concerned what was meant by the statement that the status of the foreign Muslim residents of Ceuta and Melilla was not "formally comparable to the legal status of nationals", whether the implied obstacles to their assimilation included the existence of racial discrimination and, if so, how that squared with the statement in paragraph 88 that there was no de facto discrimination. It had been reported that some 300 migrants of African origin had had to remain in Ceuta for over two years in subhuman conditions before being allowed to move to continental Spain at the end of 1995. In a similar case, some 50 African migrants were currently in "no man's land" in Ceuta - denied both entry into Spain and the right to return to Morocco. He hoped that Spain's next periodic report would give a full account of that case.

12. In connection with paragraphs 90-124 of the report, he welcomed the detailed information on the situation of foreigners and immigrants in Spain and on current and future policy in that regard. Some questions arose, however, about the constitutional and statutory position, in particular the apparently discriminatory provisions of articles 13, 14 and 19 of the Constitution, from which it emerged that equality before the law was an unqualified right only for Spaniards; in the case of foreigners it was subject to the conditions laid down by treaties and the law. Referring to the information provided in paragraphs 90-94 of the report, he reiterated an earlier request for clarification of articles 6 and 9 of Organization Act No. 7/1985, which provided for the possibility of restrictions on aliens' right of residence, freedom of movement and right to education. The provisions of article 6 of the Act, read in conjunction with article 19 of the Constitution, could lead to a situation in which foreigners were compelled to reside in a particular place. Similarly, freedom to teach under article 9 of the Act was made subject to the principle of reciprocity with the country of origin. He pointed out that the right to education and freedom of teaching was a human right per se and not subject to a similar right recognized by other States. Similar comments might be made in respect of article 18 of the new law on asylum. Given their apparently discriminatory nature, he asked

whether any consideration had been given to revising the provisions of articles 6 and 9 of Act No. 7/1985. The amendments to the implementing regulations for the Act might throw more light on those points.

13. He requested the full text of the new law on asylum (Act No. 9/1994), and invited comments on certain criticisms that had been voiced about the restrictions it had introduced. Why were so few applications for asylum granted - fewer than 5 per cent of all applications in 1993 - and could up-to-date information be provided on requests granted or denied in 1994 and 1995? Was it true that the new law restricted the granting of asylum to foreigners? Could asylum-seekers be detained, and for what length of time, while their application was pending? Did they have access to legal assistance and medical care? What was the nationality or country of origin of the persons who had been granted asylum, and were all applications treated even-handedly, regardless of the country of origin? Was it true that the interministerial commission on asylum-seekers and refugees had a policy of automatically informing the countries of origin in the case of unaccompanied minors? What was the normal procedure for applications, to whom were they submitted, how long did the decisions take, where were the asylum-seekers placed, what assistance did they receive and what was the fate of those denied asylum? He welcomed the statement in paragraph 124 of the report that some of the latter might be authorized to remain in Spain in certain circumstances, but asked whether that was applied in practice, and how many foreigners had benefited from that derogation to date.

14. Referring to the rising incidence of acts of discrimination, xenophobia, ill-treatment and physical violence against foreigners, and also to reports of ill-treatment and indifference by the police, he reiterated the concern expressed by the Committee, when the previous report had been considered, at the increasing manifestations of racism and xenophobia against foreigners and its request for detailed information on actual cases of incidents of a racist or xenophobic nature and measures taken to ensure that such manifestations were not permitted. He further reiterated the Committee's concern that Spanish law enforcement officials had in many instances failed to provide effective protection to potential victims.

15. Recalling the provisions of article 2.1 of the Convention, he asked what additional measures the Government had taken since 1994 or intended to take. A particular case, directly related to the implementation of article 4 of the Convention, concerned a group of Dutch tourists who had been denied access to a camp-site solely because the group included black persons who happened to be of Netherlands Antilles origin. The case had been reported to the police and had subsequently been dismissed by a court on the grounds that the alleged facts did not constitute a criminal offence and were therefore not punishable, a ruling later confirmed by the Ministry of Foreign Affairs. That prompted him to ask whether such acts of racial discrimination and xenophobia were punishable under current legislation.

16. The Committee was particularly concerned about the continuing existence of organizations and political parties promoting racist ideas. The existence and activities of such organizations were widely reported and had been acknowledged in paragraphs 132 and 133 of the thirteenth periodic report. While Spanish legislation provided for the punishment of unlawful acts

committed by such organizations or parties, in accordance with the requirements of article 4 (a) of the Convention, the Government had previously informed the Committee that there was no provision for the banning of such organizations pursuant to article 4 (b). He asked whether the new legislation made it possible for organizations and political parties which disseminated racist ideas and incited racial discrimination to be prohibited and dissolved.

17. He reiterated the Committee's request that detailed information be provided in the next periodic report on the implementation of the provisions of article 5 of the Convention. In the meantime, the delegation should comment on the implementation of article 5 (e) (i) on employment and 5 (e) (v) on education and training. Given the current high rate of unemployment in Spain - over 20 per cent - he requested details of the comparative situation of Spanish nationals and foreign residents. The new Criminal Code contained important provisions outlawing discrimination in employment, but he wished to know more about their practical implementation over the previous two years and any further measures planned. On the subject of education, the use of national languages, as provided for in the Constitution, was of particular interest, but more information was needed on the measures taken both by the central Government and by the Autonomous Communities in that regard. He welcomed the comprehensive information provided on the implementation of articles 6 and 7 of the Convention.

18. With reference to articles 14 and 22 of the Convention, he welcomed Spain's willingness to make a declaration under article 14 and hoped that the Government would reconsider its reservation regarding article 22. Lastly, he urged Spain to ratify the amendment to article 8, concerning the financing of the Committee.

19. Mr. VALENCIA RODRIGUEZ said that the Government of Spain should bear a few points in mind when preparing its next report. The information concerning the high number of asylum-seekers in 1993 prompted the suspicion that some would-be immigrants were abusing the right of asylum. At the same time, it was essential that the equality of treatment guaranteed to the country's more than 350,000 Gypsies should become a reality. He commended the Gypsy Development Programme and hoped that the projects organized under it would promote the economic, social and cultural rights of Gypsies. He recognized the difficulties encountered in rehousing the Gypsy population, but urged the Government to persist in its campaign to eliminate the shanty-town phenomenon.

20. He noted that, according to paragraph 93 of the report, it had been declared unconstitutional to dissolve associations promoted by foreigners. That ruling could not, however, affect the application of provisions prohibiting racist organizations. In that connection, he stressed that legislation was needed to curb the activities of neo-Nazi groups, given the increase in racism noted in paragraphs 131-134. Such groups should not enjoy the protection of the law. He hoped to see details, in the next periodic report, of Parliament's decision on the bill to reform the Criminal Code, which would introduce an offence of racism and xenophobia. The reform would meet Spain's commitment under article 4 of the Convention. Article 173 of the Criminal Code, relating to penalties for associations which promoted racial discrimination, should also be reviewed.

21. He welcomed the report's description of the training given to the law enforcement agencies, but considered that a knowledge of the Convention should be added to the curriculum. Lastly, he noted with concern the lack of precise information about possible instances of discrimination in privately run, as opposed to public, day nurseries, and he wondered what measures could be adopted in that regard.

22. Mr. de GOUTTES said that future Spanish reports should follow the Committee's guidelines in respect of presentation. However, the current report contained much useful information, particularly concerning the relationship between the State and the Autonomous Communities.

23. He regretted that some of the demographic data were out of date. For example, the statistics on literacy levels dated back to 1991 and those on asylum-seekers and refugees to 1993. In that connection he noted that, according to paragraph 99, Spain had a Bosnian population; he wondered how large it was and where it was located. It was regrettable that there was no ethnic breakdown of the unemployment figures. Nor was there proper census information on Gypsies: the figures given by various official bodies and NGOs diverged widely. He wondered whether the "fact of belonging to the Gypsy ethnic group is a piece of information protected by the Constitution" (para. 34) was really such a compelling reason for not publishing such information.

24. He asked what action had been taken as a result of the establishment of the Spanish Committee for the European Youth Campaign against racism, xenophobia, anti-Semitism and intolerance, mentioned in paragraph 54. The information in paragraph 130, concerning the extremely low number of xenophobic or racist acts recorded between 1993 and 1994, was inconsistent with the admission in paragraphs 131-134 that there had been an increase in racist violence in recent years. The delegation should comment on that discrepancy. In paragraph 128, it was stated that any racist attitudes among members of the Civil Guard were brought to the attention of the judicial authority, but that most of the complaints known to have been made had been dismissed. That raised the question whether racist acts had not occurred or had simply not been followed up, and whether the complaints that had been dismissed had been investigated with due diligence. In connection with the reference, in section 34, to six allegations of a racist nature investigated in 1993, he asked what the outcome of those investigations had been.

25. Lastly, he welcomed the information that Spain was prepared to make a declaration under article 14, which would broaden the range of rights available to individuals in that country. He hoped that the report and the Committee's conclusions would be publicized in Spain.

26. Mr. LECHUGA HEVIA commended Spain's prompt response to the Committee's concerns. Referring to paragraph 25 of the report, he requested clarification of the statement that article 9 of the Constitution recognized that there were inequalities in practice that might lead to de facto discrimination against specific groups of citizens. He wondered whether any aspect of the article was at variance with the Convention. He also asked whether the Gypsy Development Programme mentioned in paragraph 27 had been widely publicized. With reference to paragraphs 68-70, he asked whether the location of Gypsy

housing was subject to any restrictions, whether Gypsies were sometimes refused accommodation by private landlords and what machinery existed to deal with such problems.

27. He noted that Spain followed the recommendations of the European Committee for the Prevention of Torture and considered the practice of degrading, discriminatory and humiliating treatment of persons in the custody of police officers to be a very serious disciplinary fault. He accepted that torture was no longer a common practice, but the State party was unable to say that it had been completely eliminated. He asked what action was envisaged to tackle the problem.

28. Mr. DIACONU found the report interesting but too uneven, with resulting discrepancies. For example, the existence of racist attitudes within the Civil Guard was denied in section 25, but confirmed in section 47.

29. He was impressed by the description of the devolution process in Spain which had a far larger number of autonomous communities than any other European country. Spain was also to be commended for its Gypsy Development Programme. It was encouraging that legislation existed on every aspect of article 4 of the Convention. He was concerned, however, at the number of racist organizations mentioned in paragraphs 133 and 134 of the report. He understood that it was legally possible to annul the registration of organizations and that, under article 22 of the Constitution, associations that pursued ends constituting an offence could be dissolved by virtue of a court order. He wished to know whether that procedure had ever been followed and with what results. He also wondered what measures could be taken against racist organizations that were not registered and had gone underground.

30. It had been alleged that there were no schools for Castilian-speakers in Catalonia and the Basque Country. If so, measures should be taken to establish such schools. The human rights of the national majority had to be respected in the same way as those of minorities. Otherwise Castilian-speakers would not settle in certain parts of the country, with the result that a form of ethnic segregation would take place. The Autonomous Communities should be compelled to provide schooling for Castilian-speakers or should amend their own legislation to that effect.

31. He found surprising the fact that the Constitution did not permit census data to be collected on Gypsies. Such data were not confidential in Romania or Bulgaria and he could see no reason why they should be in Spain.

32. Mr. YUTZIS said that, although Spain had not followed the Committee's general guidelines in the presentation of its report, comprehensive and detailed replies to the Committee's questions had been provided. It was gratifying to learn that Spain was close to making a declaration under article 14 of the Convention.

33. With regard to paragraph 76 of the report, there was little doubt that the connotations of the word gitanada warranted its deletion from the Royal Academy dictionary. However, it would be more difficult to prevent the everyday colloquial use of the pejorative term sudaca, in reference to Latin or South Americans living in Spain.

34. Paragraph 13 of the report gave statistics on the percentage of the population that was illiterate or lacked a formal education. He asked whether illiteracy and low levels of education were most pronounced in areas with a large Gypsy population, such as Andalusia in particular. A more detailed breakdown of the figures given in the report - to show the number and percentage of Gypsies who were illiterate or lacked a formal education - would be most useful.

35. With regard to the housing situation, the report lacked sufficient data on the access of underprivileged groups, including the Gypsy minority, to standardized public housing. Statistical information would therefore be welcomed on that subject and on others, such as access to employment and health services, to enable the Committee to assess the state of implementation of article 5 of the Convention.

36. Paragraph 120 on family reunion raised the question of the extent to which the final decision to turn down requests for family reunion lay with consulates and embassies and of the balance of authority between the Ministry of Justice and the Interior and the consulates in such cases.

37. With regard to section 40 of the report, although training in human rights and race relations was given to the National Police and the Civil Guard, there appeared to be no provision for the type of training - in the psychosocial and cultural aspects of such issues - which could help law enforcement agencies genuinely to understand the thoughts and feelings of foreigners, refugees, or members of ethnic minorities. He asked whether there was any machinery for monitoring or assessing training? It would also be of interest to the Committee to know how many members of ethnic minorities, particularly of Gypsy origin, had been recruited into the police or the Civil Guard.

38. Mr. GARVALOV commended the report for its comprehensive replies to the Committee's questions. However, clarification was needed of the reference in paragraphs 10 and 12 to Bulgarian nationals who had applied for asylum in Spain in 1993 and 1994. From 1989, Bulgarian nationals had had no valid reason to seek political asylum in other countries. Paragraph 10 also erroneously gave the impression that Bulgaria was one of the new republics of the former Soviet Union.

39. The CHAIRMAN, speaking as a member of the Committee, said with reference to the comments made by Mr. Yutzis, that experiments in bringing together members of the police and judiciary with representatives of minority groups on an informal basis to promote understanding, had proved fruitful for both sides.

40. Mr. van BOVEN said that the format used for the thirteenth periodic report gave the impression that it was an additional report providing supplementary information. It was to be hoped that future reports would follow the Committee's general guidelines.

41. Spain's moves towards accepting article 14 of the Convention and withdrawing reservations entered with regard to article 22 were to be applauded. He asked whether Spain was also prepared to ratify the amendment to article 8 (6) concerning the financing of the Committee.

42. Further information was needed on the case of the tourists from the Netherlands and the Netherlands Antilles who had been refused access to a camping site in Spain - a blatant violation of article 5 of the Convention. Their efforts to seek redress in Spain had been unsuccessful because the country's criminal legislation did not adequately cover incidents involving non-Spanish nationals. He wondered whether such acts of racial discrimination could be carried out with impunity.

The meeting rose at 5.55 p.m.